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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,795	02/12/2002	David A. Norman	50097-8USPT	3663
26231	7590	06/29/2005	EXAMINER	
FISH & RICHARDSON P.C. 1717 MAIN STREET SUITE 5000 DALLAS, TX 75201			AVERY, BRIDGET D	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/076,795

Applicant(s)

NORMAN ET AL.

Examiner

Bridget Avery

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-10, 41, 46-53 and 58-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10, 41, 46-53 and 58-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 2, 4, 7, 9, 10, 41, 46, 48, 50, 52, 53, 60-65, 67-69 and 71-80 are rejected under 35 U.S.C. 102(b) as being anticipated by Mezzatesta, Jr. et al. (US Patent 5,349,276).

Mezzatesta, Jr. et al. teaches a method for controlling acceleration of a toy vehicle similar to applicant's, the method including:

- Detecting a change in a throttle/speed monitor signal from a first level to a second level (i.e. either high or low), the throttle signal being operable to induce motion via a motor (14), as taught in column 6, lines 27-68
- Generating a transition/command signal based on the change in the throttle signal, as taught in column 3, lines 8, lines 6-25
- The transition/command signal including at least one signal level intermediate to a third signal level (high or low at full speed or jog speed) corresponding to the first level (i.e. either high or low)
- A fourth signal level corresponding to the second level (inherent since each of the three monitor signals change state, changes from low to high or an error is indicated)

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- Transition from the third signal level to at least one intermediate level to the fourth signal level occurs over a significantly longer time period than a time period for change in the throttle signal from the first level to the second level, as clearly taught in Figure 2.
- The transition signal is a pulse width modulation signal having a plurality of different duty cycles, each different duty cycle including a signal level of the transition signal, see column 5, lines 33-37
- The motor includes a high and low terminal, as defined by the high and low output
- The transition/command signal ramps power to the motor, as taught in column 7, lines 28-61
- Regarding claim 9, applicant's attention is directed to column 5, lines 6-19
- Regarding claim 10, applicant's attention is directed to column 7, lines 62-68 and column 8, lines 1-25
- A binary switch/contact (22)
- Regarding claim 61, applicant's attention is directed to column 5, lines 33-37
- Regarding claim 71, applicant's attention is directed to column 4, lines 23-43.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3, 47, 66 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mezzatesta, Jr. et al. ('276).

Mezzatesta, Jr. et al. teaches the claimed invention except for a pulse width modulation range from approximately a 20 percent to approximately a 100 percent duty cycle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a pulse width modulation range from approximately a 20 percent to approximately a 100 percent duty cycle, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

3. Claims 6, 8, 49, 51, 58, 59 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mezzatesta, Jr. et al. ('276) in view of Porter et al. (US Patent 5,056,613).

Mezzatesta, Jr. et al. lacks the teaching of transitioning the motor from a first to a second angular velocity.

Porter et al. teaches the operation of transitioning the motor from a first to a second angular velocity. The transition from the first to the second angular velocity is non-linear or substantially linear. The transition signal ramps power to the motor.

Porter et al. further teaches a vehicle with signals received from an operator in physical contact with the vehicle.

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Based on the teachings of Porter et al., it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to modify the system of Mezzatesta, Jr. et al. to include the operation of transitioning the motor from a first to a second angular velocity to regulate the motor based on demand to prevent overrunning. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to receive signals from an operator in physical contact with the vehicle to base vehicle output demand on rider/user input.

Response to Arguments

4. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Bridget Avery at telephone number 571-272-6691.


Avery

June 9, 2005

